

**CITATION:** Borok, Abraham v. Primmum Insurance Company, 2025 ONSC 6881  
**COURT FILE NO.:** CV-23-00693812-0000  
**DATE:** 20251209

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** ABRAHAM BOROK, by his Litigation Guardian Tuvia Borok, Applicant

**AND:**

PRIMUM INSURANCE COMPANY, Respondent

**BEFORE:** Akazaki J.

**COUNSEL:** Sibtain Ghulam Ali and Andrew M. Lee, for the Applicant

John Lykos, for the Respondent

Anthea Cheung, for the Ontario Public Guardian and Trustee

**HEARD:** December 5, 2025

**REASONS FOR DECISION**

**OVERVIEW**

- [1] All appearances point to a reasonable settlement of Abraham Borok’s insurance claim under the Statutory Accident Benefits Schedule (“SABS”), for injuries he suffered in a 2017 traffic accident. Mr. Borok suffers a neurocognitive disability and is represented by his son Tuvia, as litigation guardian under power of attorney. In this application, originally brought in writing, Tuvia Borok sought court approval of his father’s settlement under rule 7.08 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (“*Rules*”). The rule provides that no settlement of a claim by a person under disability, “whether or not a proceeding has been commenced,” is binding on the person without the approval of a judge. I have concluded that SABS settlements do not require court approval under this rule.
- [2] The court usually considers applications for approval of settlements of civil claims on the strength of written materials. Sometimes, the court will direct counsel to file additional material to cure substantive or procedural defects. What triggered my direction for a formal oral hearing with legal argument was the filing of a licensed paralegal’s affidavit in lieu of the affidavit of the lawyer acting for the litigation guardian, required by clause 7.08(4)(b). The application did contain a lawyer’s affidavit, but the affidavit stated the lawyer was “retained for the specific purpose of bringing an application for the court approval.” The lawyer reviewed the settlement and opined that it was fair, reasonable, and in Mr. Borok’s best interests. However, the lawyer did not act for the litigation guardian in the settlement.

- [3] I did not construe the clause as permitting a lawyer retained after the completion of the settlement as retrospectively “acting for the litigation guardian” in the settlement. Because subrule 7.08(4) employed the word “shall” to list the lawyer’s affidavit in the contents of the application record, I could not dispense with the requirement. I also did not consider the lawyer’s affidavit as a formality. Unless the rule is amended, it reflects a policy decision to entrust to lawyers the negotiation of a legal claim by a person under disability. This policy is consistent with the requirement of subrule 15.01(1), that a party under disability in a court proceeding must be represented by a lawyer. I could not approve the settlement without requiring Mr. Borok to renegotiate his settlement with a lawyer acting for him. This process could result in a different settlement than the one negotiated by the paralegal.
- [4] However, this conclusion to the application did not appear fair to the injured Mr. Borok or to his paralegal representative. Eight years after the accident, the parties require closure. The SABS regulations and the Law Society rules permit paralegals to represent insureds. Nothing in those rules prohibits them from acting for a party under disability or calls into question the validity of a settlement negotiated by them.
- [5] Rule 7.08 has led to the practice of seeking court approval for SABS settlements, because insurers seek finality of process in return for payment of a lump sum. The lawyer for Primmum Insurance stated that the insurer was otherwise inclined to authorize the release of the settlement funds in return for a release signed by the litigation guardian and attorney. The Public Guardian and Trustee appeared at the hearing but took no position. The insurer’s concern should be relieved by my conclusion that rule 7.08 does not apply to settlement of SABS claims.
- [6] The solution to the conundrum created by the settlement negotiated by a paralegal becomes readily apparent when one steps back to consider the application of the *Rules* to the jurisdiction of the court and the exclusion of the court’s jurisdiction to consider SABS claims. If the court lacks jurisdiction over the claim, it is not its business to approve or disapprove a settlement of it. This conclusion applies to all SABS settlements, not only those negotiated on behalf of parties under disability.
- [7] The applicants’ inability to comply with the requirements of the rule despite the absence of a prohibition against paralegals acting for SABS claimants, under disability or not, precipitated consideration of the court’s jurisdiction to subject such settlements to approval in a broader sense. For the reasons below, I have concluded that the court lacks jurisdiction to approve of a settlement of a SABS claim. It is for the parties to satisfy themselves of the finality of the settlement in accordance with the separate process under the *Insurance Act*.
- [8] To be clear: rule 7.08 does not invalidate settlement of a SABS claim for the lack of court approval. When seen through the lens of legal competence, the application must be dismissed because of the court’s lack of subject-matter jurisdiction over the claim. In other words, if the claim could not be brought here, this court lacks authority to approve its settlement. My dismissal of the application is not to be construed as disapproval of the settlement. I will now provide my analysis of the issue.

## WHY RULE 7.08 DOES NOT APPLY TO SABS SETTLEMENTS

- [9] Since 2008, the combined effect of s. 398(3) of the *Insurance Act*, R.S.O. 1990, c. I.8, and s. 18 of R.R.O. 1990, Reg. 664, amended by O. Reg. 62/08, has exempted paralegals licensed by the Law Society of Ontario from the prohibition against public adjusters working for insureds in SABS claims. This exemption led to the expansion of the paralegal scope of practice to the field of personal injury law dealing with no-fault statutory automobile accident benefits. Neither the Law Society's by-laws nor the regulations under the *Insurance Act* prohibit paralegals from acting for claimants who require representation by a substitute on grounds of disability, such as minors or the mentally incapable. There would be no reason to doubt the binding effect of the SABS claim negotiated by the paralegal and signed off by Mr. Borok's litigation guardian, but for rule 7.08.
- [10] The issue only intersected with rule 7.08 here, because of the requirement of an affidavit by the lawyer acting for the litigation guardian in the settlement. Closer examination leads to the broader conclusion that the court lacks competence over the approval of settlements of SABS claims.
- [11] The following are the relevant provisions of rule 7.08:

7.08 (1) No settlement of a claim made by or against a person under disability, whether or not a proceeding has been commenced in respect of the claim, is binding on the person without the approval of a judge.

(2) Judgment may not be obtained on consent in favour of or against a party under disability without the approval of a judge.

...

### Where no Proceeding Commenced

(3) Where an agreement for the settlement of a claim made by or against a person under disability is reached before a proceeding is commenced in respect of the claim, approval of a judge shall be obtained on an application.

...

### Material Required for Approval

(4) Subject to any redactions or omissions required under subrule (4.2), a party or person seeking the approval of a settlement by a judge under this rule shall file, together with the notice of motion or notice of application, as the case may be, a motion or application record, which shall contain;

...

(b) an affidavit of the lawyer acting for the litigation guardian setting out the lawyer's position in respect of the proposed settlement

[12] Subrules 7.08(1) and (2) combine to preclude the binding effect of settlements of claims and judgments for or against parties under disability. They do not address the nature of the claims coming within the scope of the *Rules*. For this, we must turn to rule 1.02, which defines the scope of the *Rules*:

1.02 (1) These rules apply to all civil proceedings in the Court of Appeal and in the Superior Court of Justice, subject to the following exceptions:

1. They do not apply to proceedings in the Small Claims Court, which are governed by Ontario Regulation 258/98 (*Rules of the Small Claims Court*).

2. They do not apply to proceedings governed by Ontario Regulation 114/99 (*Family Law Rules*), except as provided in those rules.

3. They do not apply if a statute provides for a different procedure.

[13] Para. 1 of subrule 1.02(1) is worth considering, because rule 4.07 of the *Small Claims Court Rules* requires court approval of settlements for matters within that court's jurisdiction. Our rule 7.08 clearly does not require a further layer of approval by Superior Court judges.

[14] Para. 2's exclusion of the *Family Law Rules* could be more complex, because those rules do not refer to representation of persons under disability except by analogy to the *Rules of Civil Procedure*. However, no one would consider a settlement of a matter in the Ontario Court of Justice to be subject to our rule 7.08.

[15] That leaves para. 3. It excludes the operation of the *Rules* where a statute provides a different procedure for resolution of claims. Section 280 of the *Insurance Act* confers on the Licence Appeals Tribunal ("LAT") exclusive jurisdiction over SABS disputes. The LAT is a quasi-judicial tribunal created by the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, is subject to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, and publishes its own procedural rules of practice. Subsection 280(3) also precludes court jurisdiction except on appeal or judicial review from the LAT. Despite attempts to circumvent these privative enactments, the law is settled that the Superior Court has no original jurisdiction to hear SABS disputes: *Yang v. Co-operators General Insurance Company*, 2022 ONCA 178, at paras. 7-12. Indeed, if a dispute were to arise over the validity of Mr. Borok's settlement, the LAT would have exclusive jurisdiction over such a controversy.

[16] It follows that the Superior Court has no more jurisdiction to approve settlement of a SABS claim for the purpose of binding the party under disability than it would have to hear a proceeding resulting from such a claim and rendering judgment. Para. 3 of subrule 1.02(1) ousts the operation of rule 7.08 in respect of SABS claim settlements, because the

*Insurance Act* provides for a procedure governed by a different statutory framework. If rule 7.08 does not apply to Mr. Borok's settlement, court approval is not a requirement for the binding effect of any minutes of settlement or release signed by his son duly acting as his attorney.

### **CONCLUSION**

- [17] The Superior Court's jurisdiction to approve a settlement for the purpose of binding the person under disability is therefore restricted to claims that could have been determined in a Superior Court proceeding. Because original jurisdiction over claims for SABS benefits belongs exclusively to the LAT, subrule 7.08(1) does not invalidate or erode the binding effect of a settlement of a SABS claim for lacking Superior Court approval.
- [18] The application is therefore dismissed, on the ground that the court lacks jurisdiction to hear it.

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Akazaki J.

**Date:** December 9, 2025